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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

NO. 316

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES AND BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA,

Petitioners

vs.

ANNA MAE ALLEN, ET AL,

Respondents

On Petition For a Writ of Certiorari to the Supreme Court of North Carolina

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

It having been established in this case, and being no longer in contest, that the respondent employees will be subjected to compulsion such as was adjudged unlawful in the case of *International Association of Machinists vs. Street* unless they are protected therefrom, is the remedy which has been granted them fair and equitable to all concerned and free of the essential defects which this Court found in the *Street* judgment?

STATEMENT OF THE CASE

While this case is, upon the merits, closely analogous to *International Association of Machinists vs. Street*, 367 U. S. 740, there are a number of respects in which it presents and supports the position of plaintiff employees even more strongly than did the *Street* case.

The present case was tried not upon stipulations of evidence, as was the *Street* case, but by ordinary procedure and the presentation of evidence and testimony through examination and cross examination before Judge and jury — a jury composed, incidentally, as the Trial Court record shows, of varied and representative membership, Union and non-Union, men and women, white and colored. Thus, the findings of fact in this case were made not by the Court but by the jury, upon issues submitted to them in the usual manner.

The defendant Unions, now petitioners, do not deny that the plaintiff employees, now respondents, — except for such protection as they obtain through this litigation — will be compelled, against their will, to pay dues and fees to the defendant Unions or else be discharged from their jobs of long standing with the Railway Company (R. 13, 18, 121-122).

Likewise, the Union petitioners do not now question that it was in this case adequately established that the dues and fees compulsorily collected by the petitioners are in part used by them to influence votes in public elections — to elect certain candidates to public office and to defeat other candidates, and to procure the enactment of certain

legislation and the defeat of other legislation. There are, for example, in the record in this case twenty-nine pages of exhibits (R. 303-332) setting forth by dates, names and individual amounts, literally hundreds of thousands of dollars of contributions paid to candidates whom the Union leaders selected as the recipients of such largess.

There is here further voluminous evidence, such as: — copies of thirty-six special editions (R. 282, 300) of a publication partly paid for out of compulsory dues money collected from employees (R. 132), espousing and pressing the election campaigns of selected candidates for the House of Representatives and Senate of the United States, and each such "special" edition running to "something less than a million copies" (R. 247) — also, for example, a "report of the AFL-CIO Executive Council, 1957" showing expenditures, likewise out of funds derived in part by defendant Unions from employees' compulsory dues payments, of $92,343.01 and $139,071.74 for "legislative" purposes (R. 149), $232,860.72 and $618,036.12 for "international affairs" (R. 150), $352,372.18 and $365,722.04 for political "education" (R. 150), and disclosing the use of such funds to procure the enactment or defeat of legislation in such fields as "The Bricker Amendment," "Disclosure of FBI Files," "Enemy Alien Assets," "Juvenile Delinquency," "Hell's Canyon," "TVA" and "Pay Television" (R. 283-303).

From such evidence, and more of the same nature, the jury, upon the several issues submitted to them, specifically found that the petitioner Unions do use compulsorily collected dues and fees for political purposes not "necessary

or reasonably related to collective barganing." The Unions now make no contest with respect to any of these matters.

Nor do they question that this Court decided in the *Street* case that compulsion upon employees, requiring them to pay money to labor Unions, against their will, for purposes "other than defraying the costs of collective bargaining" is not supported or sanctioned by Federal law, and that such compulsion upon the respondent employees, as established in this case, is therefore not permissible.[1]

Yet the plea of the petitioners now seems to be that no matter if such unlawful compulsion be imposed, or is about to be imposed, upon these employees, they should not be allowed to obtain from any Court any equitable or injunctive relief. This contention the petitioners supplement with the further argument that the respondent employees should not have any relief in any event because at some time, unspecified, they should have "advised" the Unions as to which Union-supported political candidates and causes were objectionable to them.

[1] It is not questioned either that this compulsion upon these employees comes about by reason of Federal Statute, the 1951 Amendment to the Federal Railway Labor Act, 45 U.S.C.A. 152, Eleventh. It was so held in *Railway Employees' Department vs. Hanson*, 351 U. S. 225. Indeed, North Carolina having a "right to work" statute which protects all employees within its bounds from such compulsion, we have here a situation in which the exercise of Federal power is clearly the effective factor — it being only the affirmative action of the Federal statute striking down the shield of the North Carolina statute which makes possible the placing of the compulsion in question upon these respondents.

ARGUMENT

I. The Judgment Rendered In The Court Below Is Fair, Equitable And Appropriate And Is Free Of The Errors Which This Court Found In The Street Judgment.

The question of proper remedy is obviously the only area in which the petitioning Unions now consider that they have any opportunity of further contest in this case. It is also obvious that within this remaining area, they still hope to win this case, that is, by inducing this Court so to reshape the respondents' remedy as to render meaningless the respondents' rights.

The respondents' rights have been established. It has been adjudged by the Courts below, in harmony with the ruling of this Court in the *Street* case, that the Unions are about to impose upon the respondents a compulsion which is unlawful, that is, that the Unions, unless prevented from doing so, will compel the respondents as a condition of employment to pay money to the Unions which will be in part used for purposes "other than defraying the costs of collective bargaining." It having been adjudicated, consistently with this Court's ruling, that such compulsion upon the respondents will not be lawful and that the respondents have a right to be protected from it, the question then is — what Court action is appropriate to protect the respondents.

It is submitted that a fair and reasonable answer is to be found in separating the money which the respondents can lawfully be compelled to pay, namely, that portion which is used for "defraying the costs of collective bargaining," from the money which the respondents cannot lawfully be compelled to pay, namely, the portion which

is used for other purposes, such as the promotion of political causes and candidates. It is further submitted that the burden of separating these two portions, in the first instance at least, should be upon the Unions — they being the only persons or parties involved who know, or have the facts and information enabling them to know, what these respective portions are.

Several years before this Court came to this problem in the *Street* case, the Trial Court in the present case foresaw the difficulties which might arise on this matter of remedy and undertook to frame a judgment which would deal fairly with the interests of all concerned. The respondents believe that this judgment will now recommend itself to this Court as reasonable and proper upon the facts of this case — and as one which avoids the features that this Court found objectionable in the *Street* case.

It will be remembered that in the *Street* case Justice Brennan, speaking for himself, Chief Justice Warren, Justice Clark and Justice Stewart, and likewise Justice Douglas and Justice Black considered that the judgment which had been rendered by the lower Court in that case was too broad, in that it ran "not only in favor of six protesting employees but also in favor of the class they represent." All six of these Justices agreed that relief should be confined to the individual plaintiffs. In the present case, by contrast, all element of "class action" was rigorously eliminated by the Trial Court. The judgment now before the Court does not purport to operate in behalf of anyone except the individuals who are actual plaintiffs in the case.

The Court will also recall that in the *Street* case, the lower Courts had "perpetually enjoined" the Unions and

the Railway Companies "from enforcing the said Union shop agreements," and had provided only that the defendants might petition for dissolution of such injunction upon a showing that they had ceased "engaging in the improper and unlawful activities" which had been found against them.

Justice Brennan, for himself, Chief Justice Warren, Justice Clark and Justice Stewart, expressed the view that:

> "Restraining the collection of all funds from the appellees sweeps too broadly . . ."
>
> . . .
>
> "Even though the lower Court decree is subject to modification upon proof by the appellants of cessation of improper expenditures, in the interim the prohibition is absolute against the collection of all funds. . . . The complete shutoff of this source of income defeats the congressional plan to have all employees benefited share costs 'in the realm of collective bargaining' . . ."
>
> . . .
>
> "We also think that a blanket injunction against all expenditures of funds for the disputed purposes, even one conditioned on cessation of improper expenditures, would not be a proper exercise of equitable discretion."

The four Justices joining in the main opinion therefore voted to remand the case to the Georgia Courts for the framing of a judgment "not inconsistent" with their opinion.

Justice Douglas, without whom the four Justices joining in the main opinion would not have constituted a majority, was reluctant to take this course, but said ". . . there is the practical problem of mustering five Justices for a judgment in this case. So I have concluded *dubitante* to agree to the one suggested by Mr. Justice Brennan. . . ."

It is thus apparent that the Court was casting about for a remedy which would not be illusory to the protesting employees nor too restrictive upon the Unions — a judgment which would effectively protect the employees' constitutional liberties but also leave the Unions free to function as bargaining agents for all employees and free also to engage in such other activities as they might see fit with funds from voluntary and non-protesting employees.

It is submitted that the judgment rendered in the present case accomplishes just such an accommodation of these conflicting interests. For here there is no injunction "restraining the collection of all funds" from the respondent employees. Under the present judgment the Unions can enforce the Union shop agreement against the respondents and collect money from the respondents. Neither is there any "blanket injunction against all expenditure of funds for the disputed purposes."

The judgment in the present case leaves the Unions completely free, both in their expenditure of funds for any purposes and in their collection of funds from anyone for any purposes — save only that in collecting from the individual respondents, the Unions are confined to that portion of the respondents' dues and fees which are "reasonably necessary and related to collective bargaining." And the judgment places the burden of showing in the first instance, what such portion is, upon the Unions,

where it reasonably ought to be — for they alone are in possession of the knowledge, facts and information as to what *they* do with the money."

> "It is a rule of practically universal acceptance that where a particular fact, necessary to be proved, rests peculiarly within the knowledge of a party, upon him the law casts the burden of proving such fact."

> "The rule as to the burden of proof is important and indispensable in the administration of justice. It consititutes a substantial right of the party upon whose adversary the burden rests; and therefore, it should be carefully guarded and rigidly enforced by the courts."
>
> *Skyland Hosiery Co. vs.*
> *American Railway Express Co.,*
> 184 N. C. 478, 480; 114 S. E. 823
>
> *Anthony vs. American Express Co.,*
> 188 N. C. 407, 410; 124 S. E. 753

It is submitted that the present judgment, avoiding as it does the faults which the Court found with the *Street* judgment, is a reasonable, fair and appropriate remedy within the framework of the analyses and lines of distinc-

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"The judgment in the present case also restrains the defendants from compelling the respondents "to join" or "conform to the rules or disciplines" of the Unions. It does not appear, however, that the Unions make any point of this, and indeed it seems to have been conceded on all sides, both in this case and in the *Street* case, that neither Section 2, Eleventh of the Railway Labor Act, nor the Union shop contract executed thereunder, purport to authorize any compulsion upon employees save only with respect to the payment of "periodic dues, initiation fees and assessments." For example, the petitioners in their brief (pp. 5-7) before the Supreme Court of North Carolina, declare this to be so. Thus it would seem that the Court below was clearly at liberty to enjoin compulsions other than monetary payments — they being prohibited by the North Carolina statute and not authorized by the Federal statute.

tion set forth in the opinions rendered by this Court in the *Street* case.

II. The Respondents Are Not To Be Deprived Of Their Remedy On Any Argument That They Should Have Specified To The Unions The Union-Supported Candidates And Causes To Which They, The Respondents, Were Opposed.

We turn now to the Unions' contention that the respondents should not have any relief because they have not notified the Unions specifically what Union-supported political candidates or causes they, the respondents, oppose.

As to this, the petitioners do not favor either the Court or the respondents with any explanation as to how the respondents could have given such notification, the record being replete (R. 95, 96-97, 98-99, 103-104, 106-107, 112, 117) that the Unions never made any information available even to their local leaders with respect to what political candidates or causes they supported. For example, the President of the Charlotte Local Lodge of the petitioner, Brotherhood of Railway Clerks, testified in this case (R. 106-107):

> "None of the officials above the Local Lodge ever informed the Local Lodge membership in any way as to what would be the policy of the national Union on any matters of legislation or political candidates."

Similarly, the Secretary-Treasurer of the same Local Lodge testified (R. 112, 117):

> "The North Carolina Legislative Committee of the Railway Clerks does not make any report to the Local

Lodge or to the membership of the Lodge as to what they are doing or what they have done, so far as I know, or what they aim to do."

"To the best of my knowledge I have never heard of the officials of the Grand Lodge or the System Board or the Legislative Committee in any way making it known to the Local Lodge or the Local membership what legislation or what candidates they, that is the officials, were going to favor or oppose."

Yet the petitioners suggest that the respondents, nonmembers and litigant adversaries of the Union, should know with particularity what political causes the Unions espouse and what candidates the Unions support.

Even more amazing is this contention seen to be when it is noted that the petitioners have heretofore vigorously asserted that they used no employee dues or fees "in any political activity." Thus, the petitioners declared in their brief (p. 7) before the Supreme Court of North Carolina, that:

"There is no evidence that either the Brotherhood of Railway Clerks or the Brotherhood of Railroad Signalmen engage in any political activity."

In the same brief (pp. 67, 68) they asserted that:

"There is no credible evidence that the defendant Unions used dues and fees to influence votes in elections to public office or for contributions to campaign funds."

> "The President of the Brotherhood of Railway Clerks, Mr. George M. Harrison, testified that his organization had not used funds to advance the candidacy or campaign of any person running for political office."

The jury having found upon the evidence precisely the contrary to be the truth, and their finding having been upon appeal examined and sustained, the petitioners now blandly shift to the contention that the respondents should have "advised" the Unions which of the Union-supported candidates and causes were objectionable to the respondents.

In arguing that employees can have no protection against the unlawful compulsion here involved, unless they furnish such specific "advice" to the Unions, the petitioners themselves offer no specifics as to when or how often such information would have to be supplied by the employees to the Unions. Should such particularities of protest be brought forward at each dues paying time and each time the Unions espouse a new cause or candidate anywhere in the Nation? And, again, how is any of this to be done by employees when the Unions give them no information as to their candidates or causes but, on the contrary, solemnly avow that they have none?

It would seem unnecessary, however, to pursue the petitioners into the absurdities of their position. What the respondents did here in the way of protest was to make known repeatedly and unmistakably that they objected to the Unions' collecting and spending any money of theirs on political causes or candidates chosen or selected by the Unions, instead of by the respondents personally and individually. This is the only sort of protest the re-

spondents, as a practical matter, could have made, and there is nothing in common sense or equity or in the decision of this Court in the *Street* case that requires more than this.

The respondents testified, for example:

Meriam P. Thompson (R. 39-41): — "I am opposed to being required to pay money each month to a labor Union, which the Union may use for purposes upon which the Union decides."

"I think every American has a right to choose for himself what he wants to do with his money he earns for himself, with his own hands, without having to go through a Union to do it."

"The laws which the Union might support or which the Union might oppose to which I object would be the right-to-work law for one thing, because I am in favor of the right-to-work law and I am sure the Unions are not. Another law would be part of the Railway Labor Act, specifically what we are here in Court fighting today. That is the Union shop agreement provisions of the Railway Labor Act. Those two laws specifically are the ones I have in mind."

Craven Smith (R. 41-43): — "Q If the evidence in this case, Mr. Smith, should show that the Railroad Unions require employees of the Southern Railway to pay money to them in order for those employees to keep their jobs, and that the Railway Unions then take that money and use part of it to

support certain legislation and to oppose other legislation, to support and influence campaigns for certain political candidates and elect certain candidates and to defeat other political candidates, what is your position with respect to such use of dues money taken from you against your will?"

"A. I am definitely opposed to such activity. I am opposed to such use of my money because it strikes at the foundation of our American life. I think every American should be free to join what he pleases and use the money that he earns the way that he wants to."

. . .

"I know that North Carolina has the right-to-work law. I am in favor of that law. I am not in favor of having any money taken from me against my will and used to repeal that law. I know that the 1951 Amendment of the Federal Railroad Labor Act made the Union shop agreement possible. I am not in favor of that law but I am against it. I am not agreeable to having money taken from me against my will and used to maintain that law in effect."

George E. Atwell (R. 46-47): — ". . . I certainly am opposed to them [the Unions] advocating or endorsing candidates. . . . I would say that when the Unions endorse candidates who are in favor of continuing that portion of the Railway Labor Act which permits the Union shop, I am opposed to that."

Harold B. Hackney (R. 89-90): — "Q. Now, Mr. Hackney, if the evidence in this case should establish, or tend to establish, that the moneys which would be required to be paid by an employee of the Southern

Railway in a position such as yours under the Union shop agreement, moneys required to be paid to the Union under that agreement, would be used in part to support legislation or candidates, certain legislation and certain candidates, and to oppose other legislation and other candidates, what is your position with respect to such use of your money?"

"A. I would be absolutely against that, because I think I have sense enough to choose the candidate I would like to support myself, and then on the other hand, I think a man has a right to choose what legislation he believes in and wants to support and any candidate he believes in and wants to support."

Rebecca Scholl (R. 49): — "I would like to feel that I could support the candidates whom I wanted to; if I gave any money to the campaign, I would like to have it on the candidate whom I support and not from someone else selecting."

Elizabeth Brown (R. 64): — "If the evidence should establish or tend to establish a part of the money collected by the Union is used to oppose and seek to repeal the right-to-work laws, I am opposed to such use of my money, because I am for the right-to-work laws. If the evidence should establish or tend to establish that part of the money collected by Unions would be used to maintain the Federal law which makes possible Union shop agreements and that part of the money would be used to maintain that law in effect, I would be opposed to it."

R. P. Powell (R. 52): — "I would not be agreeable to having my money taken from me in any

amount and used by the Union to accomplish the wiping out of the right-to-work law."

Mary B. Crosby (R. 47-48): — "Q. If the evidence should show that the money which you might be compelled to pay to the Union would be used in part to influence the passage of laws, or to defeat the passage of legislation, or to influence the election of certain candidates and defeat the election of other candidates, what is your position with respect to such uses of your money?"

"A. I am opposed to it. I am opposed to use of my money to influence the passage of laws or effect the election of candidates, because I think that as individuals we should have the right to make our own decisions about such matters."

Yet in the face of all such testimony and protest the petitioners declare that each of the respondents is "to be regarded as a voluntary or acquiescing dues payer" — language which, incidentally, the petitioners quote from the *Street* opinions, but which was used there purely in reference to the class-action infirmity existing in that case — and not existing here.

CONCLUSION

It is submitted that the petitioners' contentions with respect to remedy in this case would reduce the respondents' adjudged rights to an illusion and a farce; that the judgment of the Court below is equitable, reasonable and appropriate and is free of the defects which this Court

found in the *Street* judgment; that there is consequently no occasion for the Court to review this case; and that the Petition for Writ of Certiorari should therefore be denied.

Respectfully submitted,

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